

ADMINISTRATIVE PANEL DECISION

Virgin Enterprises Limited v. gary lee, TicketSocket
Case No. D2023-3377

1. The Parties

The Complainant is Virgin Enterprises Limited, United Kingdom, represented by AA Thornton IP LLP, United Kingdom.

The Respondent is gary lee, TicketSocket, United States of America ("United States").

2. The Domain Names and Registrar

The disputed domain name <tickets-virginfest.com> and <virginfestlosangeles.com> (the "Domain Names") are registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 7, 2023. On August 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On August 10, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent (Registration Private, Domains By Proxy, LLC, DomainsByProxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 11, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on August 11, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 11, 2023.

The Center appointed Nicholas Smith as the sole panelist in this matter on September 19, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a United Kingdom company that is a member of a group of companies collectively known as the Virgin Group, which was established by Sir Richard Branson in 1970. The Complainant is the holder of the intellectual property assets for the Virgin Group, including various trademarks consisting of or containing the word “virgin”, which it then licenses to various members of the Virgin Group, including the VIRGIN Logo. One of the enterprises run by the Virgin Group is a music festival in the United States that operates under the mark VIRGIN FEST (the “VIRGIN FEST Mark”). Virgin Fest ran from 2006-2013 and was relaunched in 2018 although the first festival was delayed due to the Covid-19 pandemic. The Virgin Group promotes its Virgin Fest business through various means including through its website at the domain name <virgin.com> (the “Complainant’s Website”).

The Complainant is the owner of trademark registrations in various jurisdictions for the VIRGIN FEST Mark, including a United States trademark registered on June 1, 2021 for goods and services in classes 9, 25, 38, 41 and 43 (registration number 6,367,233).

The Domain Names were registered on July 10, 2023, and July 18, 2023, respectively and prior to the commencement of the proceeding (currently the Domain Name <tickets-virginfest.com> resolves to an inactive webpage) the Domain Names each resolved to a website (“the Respondent’s Website”) prominently featuring the Complainant’s VIRGIN FEST Mark and Virgin Logo, copyrighted material from the Complainant’s Website and purported to offer tickets to a “Virgin Fest” music event.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Names.

Notably, the Complainant contends that;

- a) It is the owner of the VIRGIN FEST Mark, having registered the VIRGIN FEST Mark in various jurisdictions including the United States. The Domain Names are each confusingly similar to the VIRGIN FEST Mark as they reproduce the VIRGIN FEST Mark and add the descriptive terms “tickets-” and “losangeles” and a Top-Level Domain (“TLD”) which do not distinguish the Domain Names from the VIRGIN FEST Mark.
- b) There are no rights or legitimate interests held by the Respondent in respect of the Domain Names. The Complainant has not granted any license or authorization for the Respondent to use the VIRGIN FEST Mark. The Respondent is not commonly known by the VIRGIN FEST Mark, nor does it use the Domain Names for a *bona fide* purpose or legitimate noncommercial purpose. Rather the Respondent is using the Domain Names to pass off as the Complainant for commercial gain by purporting to offer tickets to a VIRGIN FEST music festival in direct competition with the Complainant. Such use is not a legitimate use of the Domain Name.
- c) The Domain Names were registered and are being used in bad faith. The Respondent is using the Domain Names to divert Internet users searching for the Complainant to the Respondent’s Website to disrupt the Complainant’s business and divert Internet users searching for the Complainant to a competing website for commercial gain. Such conduct amounts to registration and use of the Domain Names in bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of the mark is reproduced within the Domain Names. Accordingly, the Domain Names are identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here "tickets-" and "losangeles" may bear on assessment of the second and third elements, the Panel finds the addition of such a term does not prevent a finding of confusing similarity between the Domain Names and the VIRGIN FEST Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Names. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Names.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the Domain Names or a name corresponding to the Domain Names in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the Domain Names. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.

- the Respondent is not making a legitimate noncommercial or fair use of the Domain Names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the Domain Names.

The Respondent has used the Domain Names to impersonate the Complainant (by the use of the VIRGIN FEST Mark, Virgin logo and copyrighted material) for the purposes of advertising ticket to its (likely fictitious) Virgin Fest music festival. Such conduct, involving the representation that the Respondent's Website is in some way connected to the Complainant, does not, on its face, amount to the use of the Domain Names for a *bona fide* offering of goods or services.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel considers that the record of this case reflects that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

The Panel finds that the Respondent must have been aware of the Complainant and its reputation in the VIRGIN FEST Mark at the time the Respondent registered the Domain Names. The Respondent has provided no explanation, and neither it is immediately obvious, why an entity would register two domain names incorporating the VIRGIN FEST Mark and direct them to a website that reproduces the VIRGIN FEST Mark and related Virgin logo and purport to offer tickets to the Virgin Fest music festival unless there was an awareness of and an intention to create a likelihood of confusion with the Complainant and its VIRGIN FEST Mark.

The Respondent has used the Domain Names, being confusingly similar to the VIRGIN FEST Mark, to attract visitors to its website where it passes off as the Complainant in order to offer what purport to be tickets to the (likely fictitious) Virgin Fest music festival. Such an action satisfies the requirements of Paragraph 4(b)(iv) of the Policy. The fact that currently the Domain Name <tickets-virginfest.com> resolves to an inactive webpage does not prevent a finding of bad faith.

Based on the available record, the Panel finds the third element of the Policy has been established.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Names, <tickets-virginfest.com> and <virginfestlosangeles.com>, be transferred to the Complainant.

/Nicholas Smith/

Nicholas Smith

Sole Panelist

Date: October 3, 2023